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6 Attorneys for Defendant ATTILIO  
7 MALATESTA, Trustee of the SURVIVORS  
8 TRUST portion of the ATTILIO  
MALATESTA and CATHERINE  
MALATESTA TRUST, dated June 20, 1995,  
for the benefit of ATTILIO MALATESTA

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CRAIG YATES.

Plaintiff.

v.

PAPYRUS; JOSEPH P. CHANG, and ATTILIO MALATESTA, Trustee of the SURVIVORS TRUST portion under the ATTILIO MALATESTA and CATHERINE MALATESTA TRUST, dated June 20, 1995, for the benefit of ATTILIO MALATESTA

Case No. 13-CV-01314-EDL

## CONSENT DECREE

19 Defendants.

WHEREAS, Plaintiff CRAIG YATES (“Plaintiff”) has filed an action in the United States District Court, Northern District of California, alleging claims for damages and injunctive relief under the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, *et seq.*), California Civil Code §§54, 54.1, and 54.3, and California Civil Code §§51 *et seq.* (the Unruh Civil Rights Act) arising out of Plaintiff’s visit to PAPYRUS on February 4, 2013, and February 20, 2013; and

26        WHEREAS, Defendant JOSEPH P. CHANG owns and operates Defendant PAPYRUS  
27 (collectively “Defendant PAPYRUS”) located at 2275 Chestnut Street, San Francisco, California  
28 (the “Subject Property”); and

1       **WHEREAS**, Defendant ATTILIO MALATESTA, Trustee of the SURVIVORS TRUST  
2 portion under the ATTILIO MALATESTA and CATHERINE MALATESTA TRUST, dated  
3 June 20, 1995, for the benefit of ATTILIO MALATESTA (“Defendant MALATESTA”) is an  
4 owner of the Subject Property located at 2275 Chestnut Street, San Francisco, California; and

5       **WHEREAS**, ATTILIO MALATESTA, as Successor Trustee of the ATTILIO  
6 MALATESTA and CATHERINE MALATESTA TRUST, under Declaration of Trust dated June  
7 20, 1995 (“Non-Party MALATESTA”) is the other owner of the Subject Property located at 2275  
8 Chestnut Street, San Francisco, California; and

9       **WHEREAS**, Defendant MALATESTA and Non-Party MALATESTA are referred to  
10 herein as “MALATESTA;” and

11       **WHEREAS**, Plaintiff, Defendant PAPYRUS, and Defendant MALATESTA have agreed  
12 upon a settlement pursuant to which Defendant PAPYRUS and MALATESTA will perform  
13 certain remedial improvements at the Subject Property as a result of this litigation to provide  
14 access to disabled persons as well as make monetary payments to Plaintiff and Plaintiff’s counsel  
15 in full and final settlement of Plaintiff’s claims for damages, attorneys’ fees, costs and litigation  
16 expenses as outlined in Section VII below; and

17       **WHEREAS**, Plaintiff, Defendant PAPYRUS, and MALATESTA agree that the  
18 settlement of this claim is made in good faith and in an effort to avoid expensive and protracted  
19 litigation, but without any admission or finding of liability or fault as to any allegation or matter;

20       **WHEREAS**, the present door, front door ramp, threshold, strike side, lack of lever  
21 hardware, narrow aisle width, and service counter height at the Subject Property may present  
22 architectural barriers to a wheelchair user; and

23       **WHEREAS**, under the “readily achievable” standard of the Code of Federal Regulations  
24 it is not readily achievable to widen the frame of the existing entryway by making changes to the  
25 plate glass window which forms the front of the store. Therefore, MALATESTA will provide a  
26 greater amount of access to the extent feasible by using best efforts to widen the frame of the  
27 existing entryway to allow for the installation of a 34” door providing 2” of clearance when the  
28 door is open at ninety degrees; and

**WHEREAS**, under the “readily achievable” standard of the Code of Federal Regulations it is not readily achievable to change the slope of front door ramp due to the angle of the ramp and space limitations such that any re-grading of the slope would create significant intrusion into the limited retail space of the Subject Property .

**NOW, THEREFORE**, it is ORDERED, ADJUDGED, AND DECREED as follows:

## I. JURISDICTION

A. The Court has jurisdiction over the subject matter of and the parties to this Consent Decree pursuant to the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§12101, *et seq.*

B. Defendant PAPYRUS and MALATESTA do not contest and agree not to contest the Court's jurisdiction to enter into and enforce this Consent Decree.

## II. DENIAL OF LIABILITY

Defendant PAPYRUS and MALATESTA deny any and all legal or equitable liability under any federal, state or local statute, regulation or ordinance, or the common law, for any damages or claims caused by or arising out of Defendant PAPYRUS's and MALATESTA's acts or inaction. By entering into this Consent Decree, or by taking any action in accordance with it, Defendant PAPYRUS and MALATESTA do not admit any allegations contained herein or in the complaint, nor do Defendant PAPYRUS and MALATESTA admit any liability for any purpose or admit any issue of law or fact or any responsibility for the alleged noncompliance of the Subject Property with the ADA, Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), California Building Standards Code, or any other state or federal building code or statute.

### III. PURPOSE

The purpose of this Consent Decree is to

- A. Resolve amicably the existing dispute between the parties hereto;
  - B. Settle the claims asserted against Defendant PAPYRUS and Defendant TESTA in the complaint filed in this matter.

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1           C. Provide for the REMEDIAL WORK, as defined in Section VI.B. below, as necessary  
2 to provide access to persons with disabilities; and

3           D. Confirm that the REMEDIAL WORK meets the “readily achievable” standard of the  
4 ADA as well as the standards set forth in the ADAAG, California Building Standards Code, and  
5 other applicable state or federal building code or statute.

6                          **IV. BINDING EFFECT**

7           A. The undersigned representative certifies that he or she is an officer or agent of  
8 Defendant PAPYRUS and is fully authorized to enter into the terms and conditions of this  
9 Consent Decree and that he or she is fully authorized to execute this document and legally bind  
10 Defendant PAPYRUS to the provisions of this Consent Decree.

11           B. The undersigned representative certifies that he is the Trustee of Defendant  
12 MALATESTA and is fully authorized to enter into the terms and conditions of this Consent  
13 Decree and that he is fully authorized to execute this document and legally bind Defendant  
14 MALATESTA to the provisions of this Consent Decree.

15           C. The undersigned representative certifies that he is the Trustee of Non-Party  
16 MALATESTA and is fully authorized to enter into the terms and conditions of this Consent  
17 Decree and that he is fully authorized to execute this document and legally bind Non-Party  
18 MALATESTA to the provisions of this Consent Decree.

19           D. The undersigned representative certifies that he or she is an officer or agent of  
20 Plaintiff and is fully authorized to enter into the terms and conditions of this Consent Decree; that  
21 he or she is fully authorized to execute this document and legally bind Plaintiff to the provisions  
22 of this Consent Decree; and that he or she has not assigned, transferred, or purported to assign or  
23 transfer, to any person or entity any claim or other matter which is the subject of this Consent  
24 Decree.

25                          **VI. WORK TO BE PERFORMED**

26           A. In general, Defendant PAPYRUS and MALATESTA shall make the Subject Property  
27 accessible to persons with disabilities in accordance with the “Readily Achievable” standard  
28 under 28 C.F.R. part 36 in conjunction with the ADAAG.

1           B. Specifically, as settlement of the equitable claim brought by Plaintiff, Defendant  
2 PAPYRUS and MALATESTA shall undertake remedial measures to make the following  
3 elements of the Subject Property accessible to persons with disabilities, which constitutes the  
4 removal of architectural barriers pursuant to the readily achievable standard as set forth in the  
5 Code of Federal Regulation (28 C.F.R. 36.304), the ADA, and the ADAAG, as referred to in the  
6 ADA and ADAAG, California Building Standards Code, and other applicable state or federal  
7 building code or statute, and which remedial measures are referred to herein as the "REMEDIAL  
8 WORK,":

- 9           1. MALATESTA will make best efforts to widen the frame of the existing  
10 entryway to the retail store to allow for the installation of a 34" door providing 2"  
11 of clearance when the door is open at ninety degrees; and  
12           2. MALATESTA will install an automatic door opener at the front entrance which  
13 shall have a palm button that is at least 4" x 4" with blue ISA button; and  
14           3. MALATESTA will install levered hardware on the new door; and  
15           4. MALATESTA will remove the metal threshold at the front door and install a  
16 beveled rubber threshold attachment no higher than ½"; and  
17           5. Defendant PAPYRUS and MALATESTA will affix a 6 x 6" ISA sign on the  
18 front of the entrance door; and  
19           6. Defendant PAPYRUS will maintain clear merchandise aisles of 35" wide; and  
20           7. Defendant PAPYRUS will provide a section of counter that is a minimum of 36"  
21 wide and 34" high.

22           C. The work to be performed pursuant to this Consent Decree shall be completed within  
23 one (1) year of the signing of this Consent Decree.

24           D. The parties also agree that the REMEDIAL WORK meets the "readily achievable"  
25 standard of the ADA as well as the standards set forth in the ADAAG, California Building  
26 Standards Code, and other applicable state or federal building code or statute.

27           ///

28           ///

## VII. MONETARY PAYMENT

A. In full and complete settlement of Plaintiff's claims against Defendant PAPYRUS and MALATESTA, it is further agreed that Defendant PAPYRUS and Defendant MALATESTA shall pay to Plaintiff and his counsel Thomas E. Frankovich, A Professional Law Corporation, the following sums in full and final settlement of all claims for damages, attorneys' fees, costs, and litigation expenses as set forth in a separate Release:

1. Defendant PAPYRUS shall pay six thousand five hundred dollars (\$6,500); and
  2. Defendant MALATESTA shall pay twenty-two thousand four hundred fifty dollars (\$22,450).

The Release itself is not a part of this Consent Decree.

## VIII. MODIFICATION

There shall be no modification of this Consent Decree without written approval of all parties hereto.

## IX. EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by the Court.

## X. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the parties to this action for the duration of this Consent Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Consent Decree, including but not limited to attorneys' fees, costs, and litigation expenses incurred in enforcing this Consent Decree, or for any further relief as the interest of justice may require.

## XI. TERMINATION AND SATISFACTION

A. Upon Defendant PAPYRUS's and MALATESTA's completion of the work to be performed, as specified, pursuant to this Consent Decree, on or before one (1) year of the signing of this Consent Decree, whichever occurs earlier, the Court's jurisdiction of this matter shall terminate unless the parties show good cause for the continuance of this Consent Decree.

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The undersigned hereby consent to the foregoing Consent Decree.

Dated: May 19, 2014 For Defendant PAPYRUS

For Defendant PAPYRUS

JOSEPH P. CHANG

Dated: \_\_\_\_\_ For Defendant MALATESTA

For Defendant MALATESTA

10 ATTILIO MALATESTA, Trustee of the  
11 SURVIVORS TRUST portion of the ATTILIO  
12 MALATESTA and CATHERINE MALATESTA  
TRUST, dated June 20, 1995, for the benefit of  
ATTILIO MALATESTA

Dated: \_\_\_\_\_ For Non-Party MALATESTA

## For Non-Party MALATESTA

ATTILIO MALATESTA, as Successor Trustee  
of the ATTILIO MALATESTA and  
CATHERINE MALATESTA TRUST, under  
Declaration of Trust dated June 20, 1995

Dated: For Plaintiff CRAIG YATES

For Plaintiff CRAIG YATES

CRAIG YATES

## ORDER

**IT IS SO ORDERED.**

Dated:

HONORABLE ELIZABETH D. LAPORTE  
UNITED STATES DISTRICT COURT JUDGE

1 The undersigned hereby consent to the foregoing Consent Decree.

3 Dated: \_\_\_\_\_ For Defendant PAPYRUS

JOSEPH P. CHANG

Dated: 14, May 2014 For Defendant MALATESTA

For Defendant MALATESTA

Attilio Malatesta  
ATTILIO MALATESTA, Trustee of the ~~survivors~~ SURVIVORS TRUST portion of the ATTILIO MALATESTA and CATHERINE MALATESTA TRUST, dated June 20, 1995, for the benefit of ATTILIO MALATESTA

Dated: 14, May 2014 For Non-Party MALATESTA

## For Non-Party MALATESTA

Successee Trustee

Attilio Malatetsu

ATTILIO MALATESTA, as Successor Trustee  
of the ATTILIO MALATESTA and  
CATHERINE MALATESTA TRUST, under  
Declaration of Trust dated June 20, 1995

Dated: For Plaintiff CRAIG YATES

For Plaintiff CRAIG YATES

CRAIG YATES

ORDER

IT IS SO ORDERED.

6 | Dated:

HONORABLE ELIZABETH D. LAPORTE  
UNITED STATES DISTRICT COURT JUDGE

1 The undersigned hereby consent to the foregoing Consent Decree.

3 Dated: \_\_\_\_\_ For Defendant PAPYRUS

JOSEPH P. CHANG

Dated: \_\_\_\_\_ For Defendant MALATESTA

ATTILIO MALATESTA, Trustee of the  
SURVIVORS TRUST portion of the ATTILIO  
MALATESTA and CATHERINE MALATESTA  
TRUST, dated June 20, 1995, for the benefit of  
ATTILIO MALATESTA

Dated: For Non-Party MALATESTA

ATTILIO MALATESTA, as Successor Trustee  
of the ATTILIO MALATESTA and  
CATHERINE MALATESTA TRUST, under  
Declaration of Trust dated June 20, 1995

Dated: May 15, 2014 For Plaintiff CRAIG YATES

For Plaintiff CRAIG YATES

CRAIG YATES

## ORDER

## IT IS SO ORDERED.

Dated: July 29, 2014

*Elijah R. D. Laporte*  
HONORABLE ELIZABETH D. LAPORTE  
UNITED STATES DISTRICT COURT JUDGE